

APPLICANTS:
George Mullin & Denise Palmer

REQUEST: A special exception to permit
a personal care boarding home in the
Agricultural District

HEARING DATE: January 12, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5459

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: George Mullin & Denise Palmer

LOCATION: 3120 Tucker Road, Street, Maryland 21154
Tax Map: 27 / Grid: 2A / Parcel: 150
Fifth Election District (5th)

ZONING: AG / Agricultural

REQUEST: A special exception, pursuant to Section 267-53F(8) of the Harford County Code, to permit a personal care boarding home in an AG District.

TESTIMONY AND EVIDENCE OF RECORD:

Preliminarily, Mr. Mullin stated that he and his wife were the owners of the subject property. It was noted to Mr. Mullin that all owners of record were required to sign an application for zoning relief. Mr. Mullin was accordingly given thirty (30) days within which to file a statement from his wife that she joins in the application.¹

Mr. Mullin described the subject property as being a fourteen and one-half (14 ½) acres in size, with approximately six (6) acres wooded or in pasture, and with an approximately one (1) acre pond.

The subject property is improved by a four (4) bedroom single family home, containing a large dining area and living room. The property also has a single car garage attached, and a detached two car garage. Mr. Mullin indicated the property has sufficient parking for ten (10) to twelve (12) cars.

Mr. Mullin originally purchased the subject property as a residence for his family. Due to an illness, Mr. Mullin has been unable to occupy the property, and accordingly is attempting to develop additional income by leasing the property to Denise Palmer.

¹ Mr. Mullin has now complied with this requirement.

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Mr. Mullin indicated that access is from Tucker Road, which is a County maintained road. The existing common drive onto the subject property will be used to access not only the subject property, but also for additional residences which will be built on newly subdivided lots behind the subject property. Mr. Mullin intends to pave that common drive with asphalt. At the time of paving the drive it will be 20 feet wide with 2 feet of gravel on either side. The paving will take place before the lots are improved. Mr. Mullin believed the lots would be sold, and accordingly paving could be installed, within eighteen (18) months.

Next testified Denise Palmer. Ms. Palmer indicated a desire to lease the home from Mr. Mullin for use as a personal care boarding home. Ms. Palmer originally requested permission to house a minimum of eight (8) and a maximum of twelve (12) residents at the subject property. However, she has elected to amend her application to request a permit for no more than five (5) clients in residence.

In addition to the five (5) residents, there will be a care giver in attendance full-time, including weekends. Ms. Palmer and her husband will also be in residence.

Ms. Palmer explained that she has a Master's Degree in counseling, and is familiar with the State requirements for a personal care boarding homes and assisted living facilities. She understands the State licensing requirements and expects no problem in meeting those licensing requirements. Ms. Palmer concluded by stating that there will be no renovation made to the property.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune, reiterating the findings of the Staff Report, indicated that the Applicants can meet or exceed all applicable standards. The subject property exceeds the minimum lot size requirement; is a single family dwelling; and the total of residents will be well below the maximum allowed by statute. The existing parking is also sufficient, and in fact exceeds the minimum requirement.

Mr. McClune understands that Ms. Palmer has amended her request to seek permission for no more than five (5) residents.

Mr. McClune further indicated that the Applicants can meet or exceed all of the requirements of Section 267-9I, Limitations, Guides and Standards, of the Development Regulations. The property is located in a rural district of Harford County. The sight distances along Tucker Road are adequate. In fact, the sight distances at the subject property are better than at other entrances along Tucker Road. There should be no adverse impact to the adjacent community. Traffic to be generated by this type of use is usually very minimal.

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Mr. McClune indicated that the closest dwelling was approximately 500 feet from the subject property in a northeast direction, and it is shielded by existing forest and vegetative growth.

Next testified Thomas and Pat Malone, neighboring residents. Mr. and Mrs. Malone indicated they had no objection to the use as it had been described at the hearing.

No evidence or other testimony was presented in opposition.

APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53F(8) of the Harford County Code which states:

- “(8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*
- (a) The proposed use shall be located in a single-family detached dwelling.*
 - (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*
 - (c) A maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.*
 - (d) Adequate off-street parking shall be provided.*
 - (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

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Section 267-52 of the Harford County Code defines General regulations as:

- “A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part I and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants seek permission to utilize a single family dwelling, situated on a fairly large, and partially wooded lot as a personal care boarding home for no more than five (5) residents. The subject property is located in a rural area of Harford County, being accessed by Tucker Road. The nearest dwelling is about 500' from the residence on the subject property. While the Applicant has subdivided four (4) additional lots to the rear of the subject property, with those lots to be sold and no doubt built upon within the foreseeable future, all building envelopes on the new lots appear to be fairly far removed from the dwelling on the subject property. (See Attachment 9 to Staff Report.)

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Furthermore, the Co-Applicant has scaled back her original request to house up to twelve (12) residents to a total of no more than five (5) resident/clients at any one time. The Applicant and her husband will reside on the property. One full-time employee will be on the property at all times.

It appears that the proposed personal care boarding home is relatively far removed from any adjoining dwelling and, as a result, it would appear to represent little or no actual impact on the residents of those adjoining properties. Traffic, as testified to by Mr. McClune, is not generally a factor in a personal care boarding home of this size. The access to the lane off Tucker Road appears to be adequate, again based upon the testimony of Mr. McClune.

It accordingly appears, and is so found, that there will be no noticeable adverse impact on any adjoining property or resident.

Accordingly, it is found that the requested special exception complies with the standards enunciated in Schultz v. Pritts, 291 Md. 1 (1981). By the uncontradicted evidence, the use at the proposed location will have no greater impact than it would elsewhere within the District.

Furthermore, the Applicants can fully comply with the specific requirements of Section 267-53F(8);

“(8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*

The subject property is zoned agricultural.

(a) *The proposed use shall be located in a single-family detached dwelling.*

The use will be located in a single family, four (4) bedroom detached dwelling.

(b) *The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*

The property is 14+ acres and meets the minimum lot size requirement for a conventional family residence in the agricultural district.

(c) *A maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.*

The total boarders will be five (5). This falls far short of the maximum number of boarders which could be allowed on this 14+ acre parcel.

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(d) Adequate off-street parking shall be provided.

The property currently has ten (10) to twelve (12) parking spaces. The parking requirement is accordingly found to be met.

(e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.

This section is not applicable.

Furthermore, the compliance of the proposed use with the factors of Section 267-9I, Limitations, Guides and Standards, must also be addressed.

Section 267-9I

(1) The number of persons living or working in the immediate area.

The subject property is located in a rural residential district of Harford County in an area of large lots and agricultural use. The proposed use would have no impact on the number of persons living or working in the immediate area.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

Pedestrian facilities are not an issue due to the nature of the use. Sight distance off Tucker Road is adequate. There would be little, if any, increase in traffic over what would be expected of a typical family.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposed special exception has been legislatively determined to be compatible with other principal permitted uses in the agricultural district. There should be no impact on either the growth of the neighborhood or on the fiscal environment of the County.

(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

None of these characteristics should be exhibited by the proposed use.

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- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. Darling and Dublin Volunteer Fire Companies will provide fire protection. Water and sewer facilities will be provided by an on-site well and septic system. A company of the Applicants' choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The use is consistent with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Harford County Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive natural features and opportunities for recreation and open space have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

It is accordingly found that the Applicant can fully meet the standards of Section 267-9I.

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CONCLUSION:

It is accordingly recommended that the proposed special exception be approved, subject to the following:

1. The Applicants shall submit a site plan to the Department of Planning and Zoning for review and approval thru the Development Advisory Committee.
2. The approval shall be limited to five (5) residents.
3. The Applicants shall obtain all necessary permits and inspections for the proposed use and any necessary renovations to the existing structures.

Date: February 9, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner